

(2006) 03 AHC CK 0209

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12786 of 2006

Mawana Sugars Limited

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 12, 12(2), 15, 15(1), 15(2)

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 22

Citation : (2006) 2 AWC 1941

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Navin Sinha and Yashwant Varma, for the Appellant; S.P. Gupta, Vivek Chaudhary and Ravindra Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—The dispute in this writ petition pertains to the 7 cane centres, namely, (i) Paharpur-II; (ii) Kunda/Pinai-II; (iii) Niloha-IV; (iv) Naglashekhu-II; (v) Navipur/Lalpur-II; (vi) Nagli Sadhararipur-II; and (vii) Incholi-III. For the current crushing season 2005-06, the said centres were reserved in favour of the petitioner M/s Mawana Sugar Ltd. (for short "petitioner-mill") and assigned in favour of Respondent No. 3 D.C.M. Sriram Industries Ltd., unit Daurala Sugar Works (for short "respondent-mill").

2. The brief facts of this case are that for the current crushing season 2005-06, for the petitioner and respondent mills, two separate orders dated 1.10.2005 were passed by the Cane Commissioner u/s 15(1) of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (for short "the Act"). By such orders (which are commonly known as the "reservation orders"), cane centres were reserved and assigned in favour of the two sugar mills. For the crushing seasons 2002-03 to 2005-06, the requirement of cane for the petitioner and respondent mills was assessed by the Cane Commissioner earlier on 5.7.2003, at

180 lac quintals and 140 lac quintals respectively. After determining the drawal percentage of the petitioner and the respondent mills at 61% and 74% respectively, by the reservation orders, the required yield of cane of the areas of the two mills, as per their respective drawal percentage, was assessed at 295.08 lac quintals and 189.8 lac quintals respectively. The production of sugar cane in the areas of both the sugar mills was assessed at 680.20 quintals per hectare. On this basis it was provided that for availability of 180 and 140 lac quintals of cane to the two sugar mills, the required yield of cane for the said sugar mills could be made available from 43,381 hectares and 27,813 hectares respectively. On the aforesaid basis, the total area allotted (which included the reserved and assigned areas) by the reservation order to the petitioner-mill was 43,705 hectares, which would have a yield of 297,28 lacs quintal sugarcane; and 28,218 hectares to the respondent-mill, which would have a yield of 191.94 lac quintals sugarcane. Since, by the aforesaid reservation order, the seven cane centres in dispute, though reserved in favour of the petitioner-mill, were assigned to the respondent-mill, the petitioner-mill filed an appeal before the State Government u/s 15(4) of the Act.

3. After hearing the parties, vide order dated 30.11.2005 the Appellate Authority (respondent No. 1) partly allowed the appeal of the petitioner and decided that three cane centres, namely, Paharpur-II; Kunda/Pinai-II; and Niloha-IV, which were reserved for the petitioner-mill and assigned to respondent-mill, would revert to the petitioner-mill; and assignment of the other four cane centres, namely, Naglashekhu-II; Navipur/Lalpur-II; Nagli Sadharanpur-II; and Incholi-III was to remain in favour of respondent-mill. Aggrieved by the aforesaid order, both the mills filed separate writ petitions. The petitioner-mill filed Writ Petition no. 5993 of 2005 before Lucknow Bench of this Court, whereas the respondent-mill preferred Writ Petition no. 75321 of 2005 at Allahabad. Though the writ petition of the petitioner-mill filed before Lucknow Bench of this Court remained pending, the Writ Petition no. 75321 of 2005 filed by respondent-mill was decided by this Court vide Judgment and Order dated 12.1.2006. By the said judgment, after setting aside the order dated 30.11.2005, the matter was remanded back to the Appellate Authority (respondent No. 1) for a fresh decision in the light of the observations made therein. Till the appeal was decided afresh, it was directed that status quo was to be maintained with regard to purchase of cane from the centres in question. On remand of the case, the Appellate Authority, vide its order dated 20.2.2006 dismissed the appeal of the petitioner-mill in toto and thus, all the seven cane centres reserved for the petitioner-mill were to remain assigned to the respondent-mill. Aggrieved by the aforesaid order the petitioner-mill has filed this writ petition.

4. I have heard Sri Navin Sinha, learned Senior counsel assisted by Sri Yashwant Verma, on behalf of the petitioner, as well as Sri S.P. Gupta, learned Senior counsel assisted by Sri Vivek Chaudhary, on behalf of the contesting respondent-mill. Learned Standing Counsel for the State-respondents no. 1 and 2 and Sri Ravindra Singh, learned Counsel for the Cane Cooperative Development Unions,

Respondents no. 4 and 5 have also been heard. Counter and rejoinder affidavits between the contesting parties have been exchanged and with consent of the learned Counsel for the parties, this writ petition is being decided at this stage.

5. The Appellate Authority has dismissed the appeal of the petitioner-mill mainly on three grounds. Firstly, that the total area available with the petitioner-mill in the previous year was 43,834 hectares whereas this year it is 43,706 hectares, which is 128 hectares less than the previous year; and the total area available to the respondent-mill in the previous year was 37,232 hectares whereas in the present year it is 28,218 hectares, which is 9,014 hectares less than the previous year, which is comparatively much more than the area which has been reduced in the case of the petitioner-mill. Secondly, that the reduction in the area was because of re-zoning on account of establishment of new sugar mills in the area and since the petitioner did not complain of there being shortage of sugarcane in the previous year, no further allotment of area was required to be made for the petitioner. Thirdly, that, because of re-zoning of the areas, the various factors enumerated in Rule 22 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 (for short the Rules") lose its efficacy and what is required to be considered is that by reservation or assignment, all the sugar mills are allotted sufficient sugarcane. Lastly it has also been stated that according to the respondent-mill, it needs more cane as it has increased its crushing capacity from 8,000 to 10,000 TCD, and its drawal is fixed at 74%, whereas that of the petitioner-mill is fixed at only 61%, hence in case if there is shortage of sugarcane for the petitioner-mill, it can increase its drawal and fulfill its requirement.

6. Sri Navin Sinha, learned Senior counsel appearing for the petitioner, has submitted that the orders pertaining to the requirement of cane for the two Sugar Mills have been passed in separate proceedings u/s 12(2) of the Act on 5.7.2003 which, for the petitioner and respondent mills, is assessed at 180 lac quintals and 140 lac quintals respectively, and as such, the same cannot be in dispute in the present proceedings. It has further been contended on behalf of the petitioner that since the drawal percentage of the petitioner and respondent-mills was fixed by the reservation order itself, and the respondent-mill did not challenge the reservation order, it would now not be open to the respondent-mill to raise the question of drawal in these proceedings. The further contention is that in its proposal given to the Cane Commissioner before the issuance of the reservation order, the respondent-mill had not even included the seven disputed cane centres, and as such the said centres could not be assigned in their favour, more-so when the Cane Cooperative Development Unions had also sent their proposals in favour of the petitioner-mill,

7. Sri Sinha has also contended that reservation of a particular area/centre in favour of one mill and simultaneous assignment in favour of another mill is not contemplated under the Act and as such the order of assignment of the seven cane centres in favour of the respondent-mill is illegal and liable to be quashed.

With regard to the reduction of its area, the petitioner contends that because of floods, in this season over 10,000 hectares of land falling in the area of the petitioner was inundated, due to which there was negligible production in the said area, which aspect has not been considered by the authorities. It has further been urged that the authorities have also not taken into consideration the fact that certain centres of two new sugar mills had been assigned to the respondent-mill till the start of crushing by the said two new Sugar Mills, from which area the respondent-mill had already purchased over 12 lac quintals of sugarcane in this season. It was lastly submitted that since the re-zoning of the areas had been done in the previous year, the reason for not applying the factors enumerated in Rule 22 of the Rules of 1954 for this crushing season is totally baseless; and that also since the dispute in the present case is between the two existing sugar mills, the various factors of Rule 22 ought to have been applied vis-a-vis the petitioner and respondent mills and in not doing so, the Cane Commissioner as well as the Appellate Authority have erred in law.

8. On the other hand, Sri S.P. Gupta, learned Senior counsel appearing on behalf of the contesting respondent-mill, has submitted that the reservation and assignment of cane centres by the Cane Commissioner in its reservation order was fully justified as it was arrived at on the basis of the requirement of cane by the respective sugar mills and according to the same, the cane areas were made available to them by the reservation order; and after considering the merits of the case, the Appellate Authority has rightly dismissed the appeal of the petitioner-mill. It has been contended that since the petitioner-mill did not adduce any evidence in support of its contention that over 10,000 hectares of their area was affected by floods, the same has rightly been ignored by the authorities.

9. Sri Gupta has also submitted that re-zoning of the area has been done in this year because of establishment of two new sugar mills and thus the various factors enumerated in Rule 22 lose its significance. In support of this he has relied on two decisions of this Court rendered in the cases of Simbhaoli Sugar Mills Ltd. Vs. Appellate Authority and others, and DCM Shriram Industries Ltd., Unit Daurala Sugar Works and P.V. Bakre Vs. State of U.P. and Others, As regards the purchase of about 12 lac quintals of cane from the cane centres which were reserved in favour of the two new sugar mills and assigned in favour of petitioner-mill till the start of crushing by the said new mills, it has been urged that the same was only incidental for this year alone and cannot be taken into consideration for the purposes of reservation and assignment to be made in favour of the respondent-mill. In the end it was submitted that since there was no plea with regard to shortage of cane made by the petitioner-mill in its appeal, the same has rightly been dismissed. It was thus urged that the writ petition ought to be dismissed, as this Court would not interfere with the findings of fact arrived at by the Appellate Authority.

10. What is necessarily to be considered by the authorities while reserving and

assigning the cane centres in favour of a sugar mill, is its crushing capacity, cane requirement, cane availability etc. For proper perusal of the said relevant factors the comparative position of the two mills in question is given in the chart below:

PETITIONER-MILL						DETAILS RESPONDENT-MILL	
Capacity						Crushing	8000-TCD
Requirement						Cane	
180 lac quintals						(assessed on 5.7.2003 Under Section 12)	
percentage						Drawal	
61%						(as per reservation order)	
of cane per						Production	
680.20 quintals						Hectare Required	
yield of cane in the						295.80 lac qtls. 189.18 lac qtls. area reserved or assigned	
required yield to be						Total	
43,381 hectares						27,813 hectares available from	
allotted 43,750 hectares						Area	
28,218 hectares (reserved or assigned]						by R.O.	
yield of cane from						Available	
297.28 lac qtls. 191.94 lac qtls. allotted area (as per drawal percentage)							
Area of							
the disputed 7 cane centres = 624 hectares						Yield of cane from such areas = 4.26	
lac quintals							

11. First of all the basic question to be considered is as to whether, under the scheme of the Act and Rules framed thereunder, the concept of reservation of an area in favour of one sugar mill and simultaneous assignment in favour of another sugar mill is at all permissible. For this, the relevant Section 15 of the Act may first be considered, which is quoted below:

15. Declaration of reserved area and assigned area.-(1) Without prejudice to any order made under Clause (d) of Sub-section (2) of Section 16 the Cane Commissioner may, after consulting the Factory and Cane-growers" Cooperative Society in the manner to be prescribed:

- (a) reserve any area (hereinafter called the reserved area); and
- (b) assign any area (hereinafter called an assigned area),

for the purposes of the supply of cane to a factory in accordance with the provisions of Section 16 during one or more crushing seasons as may be specified and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned.

(2) Where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, which is offered for sale to the factory.

(3) Where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown in that area and offered for sale to the factory (is may be determined by the Cane Commissioner.

(4) An appeal shall He to the State Government against the order of the Cane Commissioner passed under Sub-section (I).

12. While passing an order under Sub-section (1) of Section 15 of the Act, the Cane Commissioner is obliged to balance the interests of the sugar mills and the cane growers of the area. For this it is necessary to ensure that there is a reasonable supply of cane maintained for the sugar mills as per their comparative requirements, and also that the cane growers get a fair return for such supply.

13. The said Sub-section (1) authorizes that the Cane Commissioner may "at any time", cancel such order or alter the boundaries of an area so reserved or assigned. In the context in which it has been used, the phrase "at any time" here would normally mean, at any time, after the passing of the reservation order and during the commencement of the crushing season. Assignment is a temporary phenomenon which has to be resorted to for certain valid and justifiable reasons (e.g. where there may be a break down in the factory or because of certain legal impediments, the factory may close down during the crushing season), and in such contingency, in order to safeguard the interest of the cane-growers, the cane area/centres may be assigned to another mill for the remaining part of the season.

14. Under Sub-section (3) of Section 15 of the Act, the factory in whose favour the area is assigned, is obliged to purchase "such quantity of cane grown in that area and offered for sale to the factory as may be determined by the Cane Commissioner". On the contrary, Sub-section (2) of Section 15 provides that the factory, in whose favour the area is reserved, "shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, which is offered for sale to the factory." From the above it is clear that after "reservation" or "assignment" of an area/cane centre in favour of a sugar mill, the obligations cast on the sugar mill are distinct. When an area is reserved for a sugar mill, it is obliged to purchase all the cane grown in the area which is offered. A duty is further cast on the sugar mill to develop such area for its own benefit, by increasing the production of cane, and also for the benefit of the cane growers. For such purpose, the sugar mills make investments in its reserved areas by providing special quality of seeds to the farmers, constructing roads and culverts in the area, etc. There is no such obligation of development of the area cast on the sugar mill in whose favour such area is assigned nor is such sugar mill

obliged to purchase all the cane which is produced in the area, as under the Act, it is to purchase only such quantity of cane which is offered to it by the Cane Commissioner.

15. In the said situation, if an area is reserved in favour of one mill and simultaneously, in a routine manner, assigned in favour of another mill, none of the two sugar mills would invest for the development of the area, thereby resulting in loss to the cane growers and also to the yield of cane in the area. Such action, of reservation in favour of one sugar mill and simultaneous assignment to another mill, in a casual manner and in routine course, without assigning any adequate reason, is wholly unwarranted. There may be special circumstances where such simultaneous assignment, after reservation in favour of a mill, may be required, but only for special reasons. Like in the present case, where certain centres had been reserved in favour of two new sugar mills and simultaneously assigned to the respondent-mill till the start of the crushing operations by the new sugar mills, would be justified. The same was for a valid and justified reason, which was for the benefit of the cane-growers", who could not have been left in the lurch and made to retain the sugarcane with them till the new sugar mills commence their crushing operations. In exceptional cases, there could be other reasons also for making such reservation and simultaneous assignment, but in the absence of any such reason having been assigned, the simultaneous assignment of the seven disputed cane centres for the respondent-mill, after reserving them for the petitioner-mill, cannot be justified in law. The same is against the spirit of the Act and the Rules framed thereunder, as it would frustrate the purpose of reserving a cane centre for a sugar mill, without permitting it to purchase cane from such centre.

16. A Division Bench of this Court in the case of Simbhaoli Sugar Mills Ltd. (supra) has held that "the assignment of certain centres reserved for Simbhaoli Sugar Mills during the currency of the crushing season could be warranted upon the exigencies of the situation and the changing factors coming to light with the progress of the crushing season, but simultaneous assignment of the reserved centres in favour of another factory could not be possible. There is a purpose behind the assignment at a later stage during the currency of crushing season. That purpose is to safeguard the interest of cane growers.... Truly speaking the assignment is a temporary phenomenon arising out of exigencies and developments coming to light during the progress of currency of crushing season.... We have no manner of doubt that simultaneous assignment in favour of a factory in respect of an area reserved for the other is not at all contemplated."

17. As such on this ground alone, the assignment of seven disputed cane centres in favour of respondent-mill, simultaneously when they were reserved in favour of the petitioner-mill, without there being any special reason for the same, cannot be justified and is thus liable to be quashed.

18. Even otherwise, before the passing of the reservation order declaring an area

to be reserved or assigned in favour of a sugar mill, it is necessary to obtain the views of and consult the Cane-growers' Cooperative Society as well as the factories (sugar mills). In the present case, the seven cane centres in dispute were not even included by the respondent-mill in its proposal for reservation, on consideration of which the Cane Commissioner passes the reservation order. Further, the Cane-growers' Cooperative Society had also proposed that, for the present crushing season, the said cane centres should be reserved in favour of the petitioner-mill. As such also, in the aforesaid facts, there does not appear to be any justification of providing cane from these centres to the respondent-mill.

19. As regards the merits of this case as has been dealt with in the appellate order, in my view, the Appellate Authority has mis-directed itself in holding that the assignment of the said seven centres in favour of respondent-mill was justified by the reservation order. It is true that for the current season, the area reduced in the case of the respondent-mill is much more than that which has been reduced in the case of the petitioner-mill, however, the Appellate Authority has lost sight of the fact that it was the specific case of the petitioner-mill in its proposal itself that about 10,000 hectares of its area was affected by floods, in which there was negligible yield. In Para 8 of its appeal also the petitioner-mill had contended that 11,000 hectares of its area was affected by floods, out of which 90% area was inundated and that 2500 hectares was affected by the change of course of river Ganges. The Appellate Authority has not even addressed itself regarding this aspect of the case.

20. The submission of the petitioner, that the Appellate Authority has ignored such aspects of the case which are in favour of petitioner-mill, and high-lighted only those which are in favour of respondent-mill, has force. The Appellate Authority has erred on facts of the case by ignoring the aforesaid aspect of certain area of the petitioner-mill being affected by floods, and also not taking into consideration the fact that the respondent-mill had purchased 12.64 lac quintals of sugarcane from the centres which were reserved for the two new sugar mills, but assigned in its favour till the start of their crushing operations. The parties do not dispute the fact that the two new sugar mills had commenced its crushing operations only on 28.10.2005 and 25.12.2005, which was in one case nearly four weeks, and in the other case nearly three months, after the passing of the reservation order. The Appellate Authority could not have ignored this aspect of availability of additional cane of over 12 lac quintals with the respondent-mill.

21. As such, since the total cane available from the seven cane centres in question is only 4.26 lac quintals, whereas the respondent-mill has purchased nearly three times of it from the area of the other two new sugar mills, which was not accounted for in the reservation order, there appears to be no justification for the Appellate Authority to have allowed the continuance of assignment of the seven disputed cane centres in favour of respondent-mill.

22. As regards the consideration of the various factors enumerated in Rule 22, in

my view, the same have to be taken into account while considering the cases of two existing sugar mills. The decisions in the cases of Simbhaoli Sugar Mills Ltd. and D.C.M. Shriram Industries (supra), as have been relied upon by the learned Counsel for the respondent-mill, relate to cases where the dispute involved at least one new sugar mill, in which case the various factors of Rule 22 may lose their efficacy, as there cannot be a comparative determination of the factors between a new and an existing mill. This is for the reason that in the case of a new mill, the factors of Rule 22, such as, the previous reservation and assignment order; quantity of cane crushed by it earlier; views of the Cane-growers' Cooperative Society; arrangements made by it in previous year; and efforts made by it in developing the reserved or assigned area; etc, cannot be assessed. However, in a dispute for reservation of cane centres qua two existing sugar mills, all these factors enumerated in Rule 22 are necessary to be considered before the passing of the reservation order u/s 15(1) of the Act. As such, in the facts of this case, the Appellate Authority has erred in law in not taking the factors of Rule 22 into consideration while deciding the case.

23. As regards the last reason given by the Appellate Authority for continuing with the assignment of the seven cane centres in favour of respondent-mill, that the drawal of the petitioner-mill was only 61%, as against 74% in the case of respondent-mill, and hence the shortage could have been fulfilled by the petitioner-mill by increasing its drawal percentage, is also not justified in view of the fact that the drawal percentage was fixed by the Cane Commissioner in its reservation order, which had not been challenged by the respondent-mill, and had, as such, become final for the two mills.

24. As such, in my view, in the facts of this case, on merits also, the assignment of the seven disputed cane centres in favour of respondent-mill was not justified.

25. For the foregoing reasons, this writ petition deserves to be allowed, and is, accordingly, allowed. The order of the Appellate Authority is quashed and the appeal of the petitioner-mill is allowed. The assignment of the seven cane centres (Paharpur-II; Kunda/Pinai- II; Niloha-IV; Naglashekhu-II; Nauipur/Lalpur-II; Nagli Sadharanpur-II; and Incholi-III) made by the reservation order in favour of the respondent-mill (after reserving them in favour of petitioner-mill), is quashed and the petitioner-mill shall be entitled to purchase sugarcane from the said seven cane centres for the remaining part of the crushing season.